IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 309 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVUBHA KARSANJI MAKWANA

Versus

SHANTIDEVI DUNGARDAS MAHESWARI

Appearance:

MS PJ DAVAWALA for appellant Nos. 1,3-4
MR UI VYAS for Petitioner No. 1,2.
MR MANOJ N POPAT for Respondent No. 1-5

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 21/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

The present appellants are the original opponents in Motor Accident Claims Petition no. 225 of 1983 filed by the respondents-claimants, legal heirs of the deceased Dungardas Maheshwari, who died in a vehicular accident which took place on 29.10.1983.

2. On 29th October, 1983, when the deceased Dungardas Maheshwari came near railway crossing, he fewll down from his bicycle. At that time, the present appellant no. 1 Shivubha Karsanji Makwana came from opposite direction in truck no. TP 1154 and crushed him under right wheel of the truck and because of that Dungardas Maheshwari died instantaneously. Because of the accident, people gathered there. Therefore, Shivubha, driver of the truck ran away with the truck from the place of incident. However, on FIR being registered, the police arrested him on the next date i.e. 30.10.1983. Before the police, Shivubha admitted that he was driving the truck and the deceased Dungardas came under his truck and died on the said day i.e. on 29.10.1983. He was tried before theCriminal Court, but was acquitted by the learned Magistrate by giving him benefit of doubt. Be that as it may.

3. The respondents-claimants filed Motor Accident Claims Petition no.225 of 1983 before Motor Accident Claims Tribunal, Jamnagar claiming Rs. 1,70,000/- compensation from the present appellants. The original opponentnos. 1, 2 and 3 filed written statement at exh. 22 and they tried to resist the claim. They have also gone to the extent by contending that the accident had never taken place due to rash and negligent driving of opponent no.1 driver of the truck and he was never involved in that incident nor the tuck in question was involved.

4. However, the learned Tribunal, after appreciating the oral as well as documentary evidence led by the parties before it, came to the conclusion that it was the opponent no. 2 Shivubha Makwana who was driving the truck in question the date of the accident. Therefore, the Tribunal held that the deceased Dungardas Maheshwari died in the accident on 29.10.1983 because of rash and negligent driving of the driver of truck no. TP 1154.

5. There was no clear evidence regarding the age of the deceased. However, considering the age of the claimants, more particularly the age of the widow of the

deceased, who was 48 years of age, at the time of the accident, the learned Tribunal applied multiplier of 15 years and came to the conclusion that the loss of income would be Rs. 1070/-. The learned Tribunal came to the conclusion that the income of the deceased would be Rs. 1500/-. Out of Rs. 1500/-, the learned Tribunal deducted Rs. 430/- for the personal use and accordingly came to the conclusion that Rs. 1070/- would be the monthly loss to the claimants who are the legal heirs of the deceased. Applying the multiplier of 15 years, it would come to Rs. 1,92,600/- and Rs. 10,000/- was awarded towards conventional amount for expetancy of life. The total would come to Rs. 2,02,600/-. However, the claimants restricted their claim to Rs. 1,70,000/- only with interest. This has been challenged by the present appellants in this appeal.

6. Mr. Uday Vyas, the learned counsel appearing for the appellant no. 2 tried to submit that the claimants have failed to prove that the accident took place by truck no. TP 1154 driven by the appellant no.1 Shivubha Makwana. However, having gone through his admission made at exh. 35, Mr. Vyas was not in a position to substantiate his this argument. Having carefully gone through the entire oral as well as documentary evidence including his own statement at exh. 55, we are of the clear opinion that the learned Tribunal has committed no error in coming to the conclusion that the accident took place due to rash and negligent driving of the appellant no.1 Shivubha Makwana.

7. Mr. Vyas for the appellant then submitted that in absence of any cogent evidence regarding income, it was not proper on the part of the learned Tribunal to come to the conclusion that the monthly income of the deceased was Rs. 1500/- per month. We are not prepared to accept this submission in view of the evidence of Shantidev, widow of Dungardas Maheshwari at exh. 30, Jagdish Jethalal at exh. 31 and Arvind M. Patel at exh. 32. It is to be noted that the deceased had a large family consisting of in all six family members, including himself, his widow and four children. At the age of 50 years or above, a man would be expected to earn at least that much amount of Rs. 1500/- per month so as to maintain his large family of six persons. Therefore, we do not see any reason to interfere with the finding recorded by the learned Tribunal that the monthly income of the deceased was Rs. 1500/-. However, surprisingly, the learned Tribunal has deducted an amount of Rs. 430/-, out of Rs. 1500/- for the personal use of the deceased. We are really surprised that the learned

Judge has deducted Rs. 430/- out of Rs. 1500/- p.m. for the personal use of the deceased. If according to the learned Tribunal Judge, there were seven units, then it would be less than Rs. 250/- per month. In any case, the deceased would not be in a position to spend more than Rs. 250/per month. Therefore, we are of the considered opiniont hat Rs. 1250/- be taken into consideration as monthly loss of income of the claimants and not Rs. 1070/- as fixed by the learned Tribunal. It would come to Rs. 15000/- per year and even if we apply the multiplier of 11 years as submitted by the learned advocate Mr. Vyas, then also it would come to Rs. 1,65,000/-. Adding Rs. 10,000/- as conventional amount, it would come to Rs. 1,75,000/-, whereas the claim of the claimants was only Rs. 1,70,000/- and it was awarded fully by the learned Tribunal. Therefore, the argument which was sought to be advanced by the learned advocate Mr. Vyas for the appellant no. 2 that the learned Tribunal committed an error in applying the multiplier of 15 years instead of 11 years, has no substance.

8. In view of the above discussion, we do not find any substance or merit in this appeal. Accordingly, it fails and is hereby dismissed with costs.

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